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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/647,961	08/26/2003	Gerhard H. Weiler	WEI-113	3603

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EXAMINER

HYLTON, ROBIN ANNETTE

ART UNIT PAPER NUMBER

3727

DATE MAILED: 10/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/647,961

Applicant(s)

WEILER ET AL.

Examiner

Robin A. Hylton

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 August 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a) because they fail to show the injection molded plastic material in the cross sectional views as alternating thick and thin lines as described in the specification. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. The drawings erroneously depict the material as glass. MPEP § 608.02(d). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 9 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by O'Meara (US 5,228,593).

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O'Meara teaches a hermetically sealed container comprising: a hollow body **13** terminating in a neck portion **33** defining an opening, a twist-off access closure **27** including a unitary grip tab **41** and occluding the opening, an axially movable overcap **11** rotatably mounted to the container surrounding the access closure and neck portion, the overcap including a top portion **23** and a unitary skirt portion having an expandable rim, the top portion defining at least one slot adapted to engage the grip tab when the overcap is pushed toward the access closure and then rotated about the neck portion to twist-off the access closure, and a rotary position indicator **19** on the body thereof adapted for alignment with a rotary position indicator **17** on the skirt portion of the overcap.

4. Claims 9 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Schmidt (US 4,620,638).

Schmidt teaches a hermetically sealed container comprising: a hollow body **2** terminating in a neck portion **4** defining an opening, a twist-off access closure **6** including a unitary grip tab and occluding the opening, an axially movable overcap **1** rotatably mounted to the container surrounding the access closure and neck portion, the overcap including a top portion and a unitary skirt portion having an expandable rim by nature of its flexible material composition, the top portion defining at least one slot **21a** adapted to engage the grip tab when the overcap is pushed toward the access closure and then rotated about the neck portion to twist-off the access closure, wherein the overcap defines three peripherally spaced intersecting slots **21a**.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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6. Claims 1-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schmidt in view of Gettig et al (US 5,085,332).

Schmidt teaches the claimed closure and container except for the skirt being defined by a plurality of dentils.

Gettig teaches it is known to provide a skirt with a plurality of dentils.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of a skirt defined by a plurality of dentils. Doing so allows for more skirt flexure in the downward movement of the cap as the skirt bead moves over the container neck bead.

7. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 1 above, and further in view of O'Meara.

Schmidt as modified teaches the claimed closure except for serrations on the overcap skirt.

O'Meara teaches it is known to provide a cap skirt with serrations for gripping.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of serrations to the skirt of Schmidt. Doing so allows for better gripping of the overcap skirt wall.

8. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior as applied to claim 1 above, and further in view of O'Meara.

Schmidt as modified teaches the claimed closure except for a rotary position indicator on the skirt portion of the overcap.

O'Meara teaches it is known to provide a cap skirt with to provide a rotary position indicator on the skirt portion of the overcap.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of a rotary position indicator on the skirt portion of the overcap for alignment with a rotary position indicator on the body. Doing so indicates to the user the amount of rotation necessary to initially open the associated container.

9. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schmidt in view of O'Meara.

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Schmidt teaches the claimed closure except for a rotary position indicator on the body of the container adapted for alignment with a rotary position indicator on the skirt portion of the overcap.

O'Meara teaches it is known to provide a rotary position indicator on the body of the container adapted for alignment with a rotary position indicator on the skirt portion of the overcap.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of rotary position indicator on the body of the container adapted for alignment with a rotary position indicator on the skirt portion of the overcap. Doing so indicates to the user the amount of rotation necessary to initially open the associated container.

10. Claims 12-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schmidt in view of Gettig.

Schmidt teaches the claimed closure and container except for the skirt being defined by a plurality of dentils.

Gettig teaches it is known to provide a skirt with a plurality of dentils.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of a skirt defined by a plurality of dentils. Doing so allows for more skirt flexure in the downward movement of the cap as the skirt bead moves over the container neck bead.

11. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over the applied art as applied to claim 12 above, and further in view of O'Meara.

Schmidt as modified teaches the claimed closure except for serrations on the overcap skirt.

O'Meara teaches it is known to provide a cap skirt with serrations for gripping.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of serrations to the skirt of Schmidt. Doing so allows for better gripping of the overcap skirt wall.

Conclusion

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Various prior art closures teaching features similar to those disclosed and/or claimed are cited for their disclosures.

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13. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (703) 872-9306. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

14. It is called to applicant's attention that if a communication is faxed before the reply time has expired, applicant may submit the reply with a "Certificate of Facsimile" which merely asserts that the reply is being faxed on a given date. So faxed, before the period for reply has expired, the reply may be considered timely. A suggested format for a certificate follows:

I hereby certify that this correspondence for Application Serial No. _____ is being facsimiled to The U.S. Patent and Trademark Office via fax number (703) 872-9306 on the date shown below:

Typed or printed name of person signing this certificate

Signature _____

Date _____

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (703) 308-1208. The examiner works a part-time schedule and can normally be reached on Monday - Friday from 9:00 a.m. to 1:00 p.m. (Eastern time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young, can be reached on (703) 308-2572.


If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Errica Miller at (703) 306-4005.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1148 or may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the

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PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

RAH
September 30, 2004


Robin A. H. Wilson
Primary Examiner
GAU 3727